STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

INGLEWOOD TEACHERS ASSOCIATION AND ROSEBUD JOYNER,	)	
Charging Party,	)	Case No. LA-CE-1562
v.	)	PERB Decision No. 401
INGLEWOOD UNIFIED SCHOOL DISTRICT,	)	August 29, 1984
Respondent.	)	

Appearances; Rosebud Joyner, in propria persona; Howard M. Knee, Attorney for Inglewood Unified School District.

Before Hesse, Chairperson; Tovar and Jaeger, Members.

DECISION AND ORDER

HESSE, Chairperson: Rosebud Joyner, on behalf of herself,[1] excepts to the attached decision of the administrative law judge dismissing her charge that the Inglewood Unified School District violated subsections 3543.5(a), (b), and (c) of the Educational Employment Relations Act (EERA).[2]

The Board has considered the entire record and the proposed decision in light of the exceptions and briefs and hereby

[1]The Inglewood Teachers Association did not file exceptions.

[2]The EERA is codified at Government Code sections 3540 et seq.

affirms the rulings, findings, and conclusions of the administrative law judge and adopts his recommended Order. Accordingly, the unfair practice charge, Case No. LA-CE-1562, is hereby DISMISSED in its entirety.

Members Jaeger and Tovar joined in this decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

INGLEWOOD TEACHERS ASSOCIATION and ROSEBUD JOYNER,	)	
Charging Party,	)	Unfair Practice Case No. LA-CE-1562
v.	)	PROPOSED DECISION (6/9/83)
INGLEWOOD UNIFIED SCHOOL DISTRICT,	)	
Respondent.	)	

Appearances; Michael R. White, Esq. for Inglewood Teachers Association and Rosebud Joyner; and Howard M. Knee, Esq. for Inglewood Unified School District.

Before Stephen H. Naiman, Administrative Law Judge.

STATEMENT OF THE CASE

On April 8, 1982, Rosebud Joyner, as an individual, filed an unfair practice charge against Inglewood Unified School District (hereafter District or Employer) alleging violations of sections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (hereafter EERA).[1] The charge was amended three times, and added as a charging party Inglewood Teachers Association (hereafter Association or Union). The last amendment on June 11, 1982, superseded all previous charges.

[1]All references to the Educational Employment Relations Act hereafter cited are found at Government Code section 3540 et seq.

The charge, as amended, specifically alleges violation of Government Code section 3543.5(a), and 3543.5(c). The charge further recites a violation of Government Code section 3543.1(a).[2] Specifically, the charge alleges that the District violated EERA by dismissing Rosebud Joyner because of her exercise of protected rights. The charge further alleges that the District violated EERA by denying Joyner her contractual right to take up to 110 days of sick leave; by denying Joyner compensation of differential pay for certain days of sick leave; by requiring doctors' excuses for all future absences rather than a doctor's justification only for the absences which the District questioned and by refusing to process a grievance filed on behalf of Joyner.

A complaint issued on August 5, 1982. On August 19, 1982, the District filed its Answer to the unfair practice charge. The District's Answer denies the allegations in the charge, and affirmatively alleges that the charge was not timely and that the Association waived any rights to meet and negotiate.

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[2]Section 3543.1(a) recites the rights of employee organizations under EERA. Section 3543.5(b) makes it an unfair practice to "[d]eny to employee organizations rights guaranteed to them by [EERA]." It is concluded that charging party's failure to specify a violation of section 3543.5(b) in paragraph 6 b of its charge was either an oversight or a clerical error. The allegations in the charge are consistent with those required for a violation of section 3543.5(b). Thus, the failure to specify the section number is not fatal and it is concluded that the amended charge and the complaint which incorporates it include the necessary allegations to support a violation of section 3543.5(b).

An informal conference was held on September 2, 1982; and the matter was not resolved. On October 13, 1982, the District filed a Motion to Dismiss the Complaint again alleging, inter alia, that the charge was untimely and that the Association had waived any right to bargain. The Association was given an opportunity to respond to the Motion and on December 3, 1982, the Administrative Law Judge, who conducted the informal conference, denied the Motion to Dismiss in its entirety.

The formal hearing in this matter was held on January 12 and 13, 1983. The final brief in this matter was received on May 16, 1983; and the matter was deemed submitted.

FINDINGS OF FACT

The Inglewood Teachers Association and the Inglewood Unified School District are an employee organization and a public school employer within the meaning of EERA sections 3540.l(d) and 3540.l(k), respectively.[3] The Association and the District have been parties to at least two successive agreements covering the years 1978-1980 and 1980-1983.

Rosebud Joyner is Employed by the District

Rosebud Joyner was employed by the District as a certificated teacher in September 1966 and remained an employee of the District until her termination in November of 1981. On

[3]By stipulation of the parties.

or about March 6, 1975, Joyner injured her back while at work. Thereafter, she experienced continuous physical problems relating to this injury. In approximately 1977, Joyner was found to be disabled and received a 20 percent disability award. In addition, as part of the disability proceedings, it appears that Joyner's physicians were in communication with the District administration, advising them of Joyner's medical condition. During the years 1977-78, Joyner missed 27 days out of 179 scheduled workdays. During the year 1978-79, Joyner was absent 15 days out of 180 workdays. During the school year 1979-80, Joyner was absent 87 days out of approximately 179 workdays. During the school year 1980-81, Joyner was absent approximately 94 days out of 175 workdays.

Rosebud Joyner's Alleged Protected Activity

In approximately 1968, Joyner became a charter member and first officer of the Inglewood Federation of Teachers (IFT). She remained a member of that organization until mid-1970. Apart from her early membership in and office with the IFT, Joyner"s activities with that organization appear to be unremarkable. In addition to membership in IFT, Joyner testified that over the years, she variously assisted employees in filing of "documents" with the District. It is unclear from her testimony what kind of documents were filed, but it appears she was not acting in any official union capacity and that her name did not appear on any of the documents.

During the academic year 1980-81, Joyner was assigned to Monroe Junior High School. The principal at that high school was Peter Butler. In late fall 1980, it became known that administration intended to transfer Butler to another school in the middle of the year. Joyner and a number of other teachers personally opposed Butler's transfer. They prepared and distributed flyers to staff and the public and conducted meetings, some of which were held in Joyner's classroom. Joyner testified that she was part of a group or "committee of [10 to 20] teachers," all of whom had equal visibility and responsibility for the protest of the mid-year change in principal.

In addition, earlier in the fall of 1980, the District transferred approximately 6 to 8 teachers from the school in which Joyner worked. Joyner and other teachers became angry and upset and discussed this change during their lunch hour in the school lunchroom. Joyner suggested they file a "class action" against the school district in order to keep the positions at Monroe Junior High School. It appears that her comments may have been overheard by Assistant Principal Lance Vlach, who was about 3 or 4 feet away from Joyner when she made the statement. The record is devoid of any evidence that the assistant principal or other representative of the District made any statements in response to Joyner's generalized suggestion.

When Butler was transferred, he was replaced by Dr. Earl Rector. Joyner testified that Rector was sent to Monroe Junior High School as a "hatchet man" and was out to "get her." When asked to be more specific about the source of these statements, she could only testify that it was "common knowledge in the community." Joyner testified that when Rector arrived he "zeroed in" on her. When asked to clarify this statement, Joyner testified that on his first day at school, Rector spoke to her and said "I am glad to meet you, Mrs. Joyner, or words to that effect." Joyner could not testify as to any other specific statement by Rector.

Joyner testified that when Rector arrived at Monroe Junior High School, he began to hold numerous faculty meetings. She testified that on the days she was present at work, she sometimes intentionally did not attend the faculty meetings because she felt that her time was better spent teaching the students. She also admitted she was late for the meetings, sometimes intentionally, sometimes because of illness. Joyner also admits discussing with her colleagues the idea of protesting meetings by going in late and sometimes, this was put into practice. There is no evidence that the District administration knew of these discussions.

During this same period Joyner complained about dogs underneath her portable building classroom. She was concerned

about the effect of fleas and other health threats to her students. She also suggested that the District should have the dogs removed. There is no evidence how or if the District responded.

Early in the second semester, Rector evaluated Joyner and asked for her teaching objectives. Joyner testified that Rector had an assistant principal prepare the evaluation. Rector then revised the evaluation to show areas where improvement was needed. Specifically noted was Joyner's poor attendance record at school and at faculty meetings, her alleged inability to relate to other teachers, and her alleged failure to change her bulletin boards. Joyner does not dispute the evaluation comments, but testified she had never previously received such a negative evaluation. Joyner further testified that she had turned in her objectives, but they were misplaced. When she turned in a second set of objectives to Rector, she tried to write the words "duplicate" on the document and he would not let her do so.

Administration's Response to Joyner's Absences

At the end of January 1981, the District hired Rose Blum Bard as the director of personnel. Bard worked half-time in the month of February and began her full-time employment in March of 1981. Sometime prior to March 1981 Rector discussed with Bard his concerns about Joyner. During the week of

March 2, 1981, Joyner was absent four out of five days. On Wednesday, March 4, Bard called Joyner at home and requested a meeting to discuss her absences. Joyner responded that she was ill and could not come to any meetings, but would speak with Bard when she returned to her teaching duties. Bard called Joyner again on March 5, 1981, and asked for a meeting. Joyner said she could not go anywhere except to the doctor.

Joyner met with her classes on Friday, March 6, 1981. She did not attempt to see Bard before beginning teaching on that day. During the morning while Joyner was giving a spelling examination, Dr. Rector came into her classroom with another employee and asked Joyner to go to Bard's office. He indicated to Joyner that the other employee would take over her class while she went to the meeting with Bard. Joyner asked if she could have a representative with her and Rector told her that she could call a representative. Rector offered to drive Joyner to the meeting; however, she declined.

Joyner went alone to Bard's office and when she arrived, she found Rector, Bard, and a secretary waiting for her. The discussions at the meeting were summarized by Bard in a letter to Joyner. In relevant part the letter stated:

> Thank you for attending the March 6th meeting held among Dr. Earl Rector, you and me. This letter will serve to summarize that meeting.
>
> The reason I had asked you to come in was that I was concerned about your frequent absences and the effect of these absences on the continuity of program for the students

> at Monroe. . . . I indicated to you that it was my responsibility to help resolve employee problems of a continuing nature. Your absences for illnesses have been frequent over the last few years. I asked you if you were familiar with the Disability Allowance that is provided through the State Teachers Retirement System. I suggested to you that you work with your doctor in obtaining a Disability Allowance. Additionally, I suggested to you that you might consider an unpaid leave of absence and take some time to improve your health. You indicated that you were not aware of the benefit of Disability Allowance, and that you need to talk to your attorney. I stated I would be happy to help you in any way I could. I informed you that frequent absences are disruptive to the program, and that the Contract authorizes me to request verification of absences. I stated to you that I would be requiring a verification of any absences that you took. Additionally, please be aware that continuing absences may indicate unfitness for service and may be cause for termination. We cannot continue to accept these kinds of absences.
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> . . . . . .
>
> You indicated a need to call your attorney. You have the right to have a representative assist you in this matter. I will be happy to meet with you and your representative at any time.
>
> I asked you if you had anything else to add. You said "I have nothing to say."

Finally, the letter requests that if Joyner disagreed with the summary as recited in the letter that she should advise Bard by March 20, 1981.4

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[4]The respondent and charging party presented little evidence of what occurred at the meeting on March 6, 1981. Respondent, by examination of Rose Bard, asked in a summary fashion whether the letter accurately reflected the events of

Joyner testified that she told Bard her absences were due to an industrial injury, and agrees that her responses at the meeting were otherwise minimal save a request for an attorney and a request to end the meeting.

On April 2, 1981, Bard wrote Joyner another letter. The letter references a conversation between Joyner and Bard "on March 10, 1981."[5] Bard further wrote:

> . . . I am informing you that . . . you have been absent on March 16, 17, 18, 25, 27, 30, 31, and April 1, 1981. As you will recall in my letter to you on March 10, 1981, I stated that I would be requiring a verification of any absences that you took. This is to request that you verify the reason for the absences for the above dates. Please submit this information to me as soon as possible. Additionally, on March 10th I informed you that continuing absences may indicate unfitness for service and may be cause for termination. Please be aware that we are concerned about these continuing absences and the affect that these absences have on students.

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the meeting and Bard testified, "Yes, it reflects the meeting." Joyner, when asked about the letter, merely said that it did not reflect all that was said. The quoted portion of the letter merely recites the words that Bard addressed to Joyner. Bard was present to testify at the hearing and did verify that the letter reflected what Joyner was told and charging party had ample opportunity to cross-examine Bard and to examine Joyner concerning the substance of the meeting. The letter was offered, and received in evidence without objection. It is concluded that the summary of the meeting found in the letter of March 6, 1981, accurately reflects the events which occurred at that meeting. Thus, the letter is evidence of what Joyner was told at that meeting.

[5]The record does not support this reference and rather, shows that the only conversation between the two individuals occurred on March 6, 1981. This discrepancy in the letter, while of some concern, is not fatal.

Joyner does not dispute that she was absent on March 16, 1981, and several days thereafter. She testified that when she was going to be absent, it was her practice to call the clerical employee in charge of obtaining substitutes and notify that person that she was going to be absent. She further testified that it was her practice that, if she was absent additional days, she would not call until she was ready to return to work. On March 16, Joyner called and spoke with the substitute clerk, Pam Perillo. When she told Perillo that she was not going to be at work that day, Joyner was told by the clerk that she would have to bring in a note. Joyner states that she told the clerk to record "that I am sick today." Joyner admits that she never brought a note, and she further testified that her reasons for not bringing the note were that the District knew of her disability and therefore knew of her reasons for being absent.

On May 4, 1981, Bard again wrote to Joyner. Bard testified that she did not know whether Joyner had received her previous letter at the time she wrote her letter on May 4.[6] The May 4 letter stated as follows:

> On April 2, 1981, through Certified mail, I sent you a request for verification of absences that you have taken through April 1, 1981. To date I have not received a response from you, nor the verification of reasons for absences for those dates.

[6]The record reflects that Joyner signed a return receipt for the April 2 letter on or about May 2, 1981. Joyner admits receiving the April 2 letter on or about May 2, 1981.

> Additionally, since April 1st you have been absent on the following days. April 9, 20, 21, 22, 23, 24, 27, 30, and May 4, 1981. Again, I am requesting that you submit this information to me as soon as possible, however, no later than May 8, 1981. Please be aware that continuing absences may indicate unfitness for service and may be cause for termination. Please be aware that we are concerned about these continuing absences and the affect that these absences have on the welfare of the schools and the students thereof.

The respondent could not establish whether Joyner ever received this last letter. There is no return receipt showing a signature for it. Moveover, Joyner testified that she did not receive this letter and Bard could not testify that she had any evidence to the contrary.

Bard instructed District personnel to treat any of Joyner's unverified absences as personal necessity leave rather than sick leave. Personal necessity leave is leave without compensation. Prior to this new set of instructions, all of Joyner's absences had been treated as sick leave for which she would receive compensation. Joyner's checks for the months of April and May reflected a reduction in compensation due to the fact that the District charged her absences to personal necessity leave.

On May 5, 1981, Bard wrote the following letter to Joyner:

> This is to inform you that at the regularly scheduled Board of Education meeting on May 11, 1981, it will be recommended that the Board consider action terminating your employment with the Inglewood Unified School District.

> Please feel free to attend the Board meeting Monday night.

Joyner attended a Board meeting on May 11, 1981; thus, it would appear that she received the May 5 letter prior to May 11, 1981, or otherwise knew of the meeting. In any case, Joyner heard an accusation against her which, if found to be true, might result in her termination. The Board recommended that the District proceed with the termination action against Joyner.

Joyner Discusses Her Problems with the Union

Sometime early in 1981, Joyner spoke with James Gerald who was then the Union President, Chief Executive Officer, General Manager, and Grievance Chair. She advised him of her concerns about her future employment and specifically mentioned to him that the District had questioned the number of her absences. It appears that Joyner had numerous conversations with Gerald regarding these concerns and anxieties.

Gerald undertook to speak to Assistant Superintendent Dr. Bernard Garen.[7] Gerald told Garen of Joyner's anxieties over the District's response to her absences. Garen responded that the District was concerned about the number of days Joyner had been absent and the cost of these absences to the

[7]Garen variously testified he was an "Assistant Superintendent" and "Deputy Superintendent."

District. Gerald suggested that perhaps the District could find a way to mitigate the cost to the District by utilizing the various insurance programs available to employees. There was no discussion between Garen and Gerald of possible termination. In approximately March 1981, Joyner told Gerald of her meeting with Rose Bard. Joyner further told Gerald that Bard had insisted that all future absences be verified or they would be treated as personal business. Gerald acknowledged these conversations with Joyner and stated that he told her that "Bard had no right to do this, that it was not a reasonable interpretation and that [she should] resist and . . . file a grievance if Ms. Bard persisted."

Gerald learned of the District's intention to terminate Joyner a day or so after the Board meeting on May 11, 1981. Gerald was not present at the Board meeting, but was informed of the action by Joyner and representatives of the Union. Gerald testified that he was not aware of the specific accusations against Joyner. Gerald further testified that he did not make any effort to discover the nature of the accusations against Joyner absent a few inquiries to certain District personnel who rebuffed him because of the confidentiality of the proceedings. Gerald testified that the Union was not required to represent non-members in dismissal proceedings; that dismissal proceedings raised issues outside

the terms of the agreement between the parties; and that he informed Joyner that she would have to obtain her own representative in the dismissal proceedings. Further, Gerald testified that he did not ask Joyner for a statement of the charges against her because "I didn't want to get stuck with her legal fees." Gerald went on to state that, upon advice from Union field representatives and his own judgment, he did not want to learn too much about the specifics of the termination proceedings for fear that it might invoke a duty of fair representation action against the Association and thus he was "rather discreet about questioning Mrs. Joyner about the case . . ." Thus, once the termination proceedings began against Joyner, the Union did not attempt to gather further information regarding the District's termination proceedings or the events which led up to it.

The Termination Hearings

The hearing before the Commission of Professional Competence was held on July 25, 28, 29, 30, October 13 and 14, 1981. Joyner was represented by an attorney throughout the proceedings. The panel members were one representative selected by Joyner and her counsel, one representative selected by the District, and one neutral member selected by both parties.

In November 1981, the Commission issued its decision dismissing Joyner, having found her unfit for service.[8] The Commission unanimously agreed that Joyner should be dismissed for the following reasons:[9]

X

> It was established that respondent [sic] during the 1979-1980 school year, respondent Joyner was absent from service 97 days, which comprised 55 percent of the number of days classes were in session. On eight additional days, other teachers were required to cover respondent's first period class because of her late arrival. Such conduct constitutes evident unfitness for service.

XI

> A. It was established that during the 1980-81 school year, respondent Joyner was absent from service 94 days, which comprised 54 percent of the number of days classes were in session. On eleven additional days, other teachers were required to cover respondent's first period class because of her late arrival. Respondent's excessive absences made it impossible for her students to be involved in an instructional program with continuity or structure, and another teacher was required to be assigned to her classes.
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> B. Such conduct as is set forth in Findings of Fact X and XI was of a magnitude that rendered the performance of the respondent unreliable, inefficient and

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[8]The decision was amended to cure inconsequential, typographical errors on December 17, 1981.

[9]There were other minimal stated reasons for dismissal on which there was not unanimous agreement.

inadequate. It put an unfair burden on the District including the chronic necessity for bringing in substitute teachers to replace respondent. Such conduct on the part of the respondent constitutes evident unfitness for service.

XII

A. It was established that on or about March 6, 1981, respondent Joyner was required by the District's Personnel Director, Rose Bard to submit a physician's verification of future absences pursuant to Article IV(A) (II) of the Agreement between the District and the Inglewood Teachers Association. This section permits the District to request such a verification if it "has reason to believe that the absence may not have been used for proper sick leave purposes." From March 6, 1981, through the end of the 1980-81 school year, respondent Joyner was absent 45 days [sic] classes were in session. During this period, she willfully failed to provide a physician's verification for any of these absences as required. According, [sic] such absences are found to be unauthorized.

B. Such conduct as is set forth in Finding of Fact XII-A above constitutes evident unfitness for service and persistent violation of and refusal to obey reasonable regulations duly prescribed for the government of the public schools.

There is no evidence in the record that Joyner, or anyone acting in her behalf, suggested to Bard or the Commission during the hearing that the proceedings against her were based upon dissatisfaction with her Union activities; her protests of the Butler transfer or the failure to fill eight teaching positions; her complaints about conditions in or about her

classrooms, or discrimination because of her race. Indeed, all of these arguments were raised for the first time at the hearing before the Public Employment Relations Board.

Following the Termination Proceedings Against Joyner, the Union Attempts to File a Grievance.

After learning of Joyner's dismissal by the Professional Competence Committee and the Board of Education, on approximately December 16th, the Union's Representative Council passed a resolution protesting the dismissal of Joyner or any other teacher based upon exercise of rights guaranteed by the agreement between the Association and the District. Further, the resolution stated that the Association denied that any future precedent would be set by the actions which the District had taken against Joyner. The day following passage of the resolution, the Association sent a request to the District Superintendent Dr. Frances B. Worthington, requesting that the Association be given time on the School Board agenda to publicly read the resolution to the Board. Apparently, no response was received from the District. Gerald admitted that the School Board's rules preclude placing personnel matters on the public agenda and that these matters are relegated to executive sessions. However, Gerald said he disagreed with the rule.

At some unspecified time after the Commission Decision, Gerald approached Garen and acknowledged that the time lines

for filing a grievance had long past. Gerald asked Garen how he should proceed and whether Garen would agree that filing the grievance was futile so that the Association could pursue its actions in another forum. Ostensibly Garen suggested that the Association should file its grievance and have the matter heard on the merits.

On January 13, 1982, the Union President Gerald approached Dr. Garen with a memorandum entitled "Initiation of Grievance Proceedings in regard to Mrs. Rosebud Joyner's sick leave." This document summarized the events of March 1981 in which Bard requested that Joyner bring doctor's excuses for all absences after March 10, 1981. The grievance alleged that Joyner had been improperly denied sick leave compensation when she did not produce the requested doctor's excuses, since the District had a right only to request excuses after an absence had occurred, not prior to such absences. The grievance asked that Joyner be "paid for all sick leave incorrectly charged as personal business, or otherwise, erroneously accounted for in violation of the contract."

When the grievance was delivered to Garen and Superintendent Worthington on January 13, 1982, Garen was about to terminate his employment with the District and took no action on the grievance. It appears that no response was ever received by the Association to this purported grievance.

On approximately April 13, 1982, the Association wrote to Superintendent Frances Worthington. The Association stated, with regard to Joyner's and two other grievances still pending after Garen left, "we would appreciate your level II proposed resolution within 10 days; not hearing this, in any matter, we shall assume you wish to proceed to arbitration." The record fails to reveal that the Union or the District did anything further to advance the processing of the grievance.

In relevant part, the grievance procedure of the Agreement provides as follows:

> ARTICLE V - GRIEVANCE PROCEDURE
>
> A. Definitions
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> 1. A grievance is defined as an alleged violation, misinterpretation or misapplication of expressed written terms of this Agreement and that by reason of such alleged violation, a teacher's rights have been adversely affected.
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> . . . . . .
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> 3. The grievance procedure shall not be utilized to contest the dismissal of a teacher and the application of the requirements EEOC, Title VI, Title VII and Title XI, unemployment insurance and any other Federal or State statute for which a specific method of review is provided by law.
>
> 4. A day is a day on which the District office is open for business except that, when a grievance is filed subsequent to May 1 and prior to the end of the school year, the time limits shall be regarded as calendar days. Any time limit affected by

the Christmas holidays or spring recess shall be extended by ten (10) and five (5) days, respectively.

5. A grievant or an aggrieved person is any person(s) in the bargaining unit as defined in this Agreement. The Association may be the grievant on Association rights, payroll deductions, negotiation procedures and zipper.

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B. Procedure

1. Informal level

a) Before filing a formal written grievance, the grievant shall attempt to resolve a grievance by an informal conference with the grievant's immediate supervisor. Said conference shall be requested within fifteen (15) days of the occurrence [sic] of the act or [sic] commission giving rise to the grievance or when the grievant could be reasonably expected to know of the event which gives rise to the grievance or teachers lose the right to grieve.

b) The immediate supervisor shall hold a conference with the grievant within five (5) days of receipt of a request and attempt to resolve the matter and respond in writing upon request within two (2) days after the conference.

c) The grievant may be represented by an Association representative at all meetings and hearings above the informal level of the grievance procedure and at the informal level after the grievant has had at least one informal conference with the grievant's immediate supervisor.

d) If the immediate supervisor does not hold a conference or respond in writing within the time limits stated above, then the grievant may proceed to Level I with the grievance.

2. Level I

a) If a grievant is not satisfied with the results of the conference, the grievant must, within five (5) days of the oral conference or the receipt of a requested written response, present the grievance in writing on the approved form to the immediate supervisor. . . .

b) The immediate supervisor shall hold a hearing with the grievant and shall communicate a decision in writing seven (7) days after receiving the grievance.

c) In the event the immediate supervisor fails to conduct a hearing and render a decision within the seven (7) days, the grievant shall notify the superintendent or designee who shall convene a hearing within seven (7) days after notification and direct the immediate supervisor to render a decision in writing* Such a directed decision shall be made within three (3) days. If the time limits specified above are not followed, the grievant may appeal the grievance to Level II.

3. Level II

a) In the event the grievant is not satisfied with the decision at Level I, the grievant may appeal the decision to the superintendent or designee on the appropriate form within seven (7) days of the receipt of the Level I decision.

. . . . . .

c) The superintendent or designee shall hold a hearing with the parties and render a decision in writing within ten (10) days of receipt of an appeal.

4. Level III

a) If the grievance is not resolved at Level II, the grievant may request that the Association submit the grievance to arbitration. The grievant shall make such request within five (5) days after receiving

the Level II decision. The Association shall notify the superintendent or designee within ten (10) days after receipt of Level II decision by grievant if the grievance has been submitted for arbitration by the Association.

. . . . . .

c) If any question arises at [sic] to the Arbitrability of the grievance, such question(s) will be ruled upon by the arbitrator.

. . . . . .

j) The arbitrator shall render the decision no later than thirty (30) days after the conclusion of the hearing. Such decision shall be final and binding on the parties.

. . . . . .

5. Miscellaneous

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b) Since it is important that grievances be processed as rapidly as possible, the time limits specified at each level should be considered maximums and every effort should be made to expedite the process. The time limits, however, may be extended by mutual agreement.

c) Failure of the grievant or Association to abide by the time limit specified shall result in the grievant or the Association being deemed to have accepted the decision. The Association shall be given an opportunity to file a written response to any proposed settlement prior to the final resolution of the grievance.

. . . . . .

> g) The processing of a grievance beyond Level II shall constitute an expressed election on the part of the grievant that the grievance arbitration procedure is the chosen form for resolving the issues contained in the grievance and that the grievant will not resort to any other forum for resolution or review of the issues.

In relevant part, the contract provisions relied upon by the Association in the purported grievance filing and in the proceedings in this matter are as follows:

> ARTICLE IV - LEAVE PROVISIONS
>
> A. SICK LEAVE
>
> 1. Full-time teachers shall be entitled to ten (10) days leave with full pay each school year for purposes of personal illness or injury. . . .
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> . . . . . .
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> 4. Sick leave credit may be used by the employee for sick leave purposes, without loss of compensation. Upon exhaustion of all accumulated sick leave credit, an employee who continues to be absent for purposes of this policy shall receive the difference between their regular pay and the amount actually paid a substitute, or if no substitute is employed, the amount which would have been paid a substitute if one had been employed. The days of differential pay, when combined with days of accumulated sick leave utilization, shall not exceed one hundred and ten (110).
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> . . . . . .
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> 6. The teacher shall notify the District Office as soon as the need to be absent is known, but, unless exceptional circumstances prevent, no later than 6:30 a.m. on the day of the absence in order to permit the

District to secure a substitute. However, if an employee's service commences prior to the regularly scheduled school day, the employee shall contact the District Office no later than one and one-half (1-1/2) hours prior to the start of the teacher's workday. The notification described herein shall also include an estimate of the expected duration of the absence.

. . . . . .

8. If the duration of the absence is the same as the estimate thereof, the teacher shall not be required to notify the District Office of intent to return to work. If the duration of the absence is less than the estimate thereof, the teacher shall notify the school secretary by 2:00 p.m. on the day preceding the day of return to work. If the duration of the absence exceeds the estimate thereof, the teacher shall notify the school secretary that the teacher will not return to work by 2:00 p.m. on the workday preceding the original expected day of return, and estimate when the teacher will return.

9. If an employee is absent for twenty (20) consecutive workdays or more, the employee shall advise the District Office by 2:00 p.m. on the day preceding the day of intended return of such intent. If the employee fails to notify the District, as specified herein, and returns to work on said day, the employee may be denied work on said day.

10. As a condition for return to work following an absence occasioned by major surgery, major disability due to illness, accident or maternity, a doctor's release certifying employee's capability of resuming all regular activity of the assignment and the date of return shall be submitted to the District.

11. It shall be the prerogative of the District to require physician's verification of absence due to illness or injury if the District has reason to believe that the absence may not have been used for proper sick leave purposes.

. . . . . .

I. OTHER LEAVES WITHOUT PAY

1. The District may grant a teacher, upon written request, an unpaid leave of absence for up to one (1) school year . . . .

2. A teacher may apply for and shall be granted an unpaid health leave of absence for the remainder of the current school year and up to one (1) additional school year. Such leave may be extended for an additional period of time.

3. If the leave of absence was granted for health reasons, the teacher shall submit prior to return to service a doctor's statement certifying the teacher's capability of resuming all regular duties of the assignment from which leave was granted.

4. A teacher on leave of absence without pay for one (1) year or more shall notify the District Personnel Office by February 15 of his/her intent to return to service in the District for the following year. Failure to give said timely notification shall result in an automatic extension of leave unless there is a vacancy for which teacher is competent and qualified to fill and teacher desires the position.

5. A teacher returning to service within one (1) year shall be returned to the position from which the leave was granted. A teacher returning to service after more than a year's leave shall be placed in a position of equivalent status and rank unless other arrangements are mutually agreed to by the employee and the District.

. . . . . .

K. RIGHTS OF TEACHERS ON LEAVE

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3. A teacher returning from a leave of not more than one (1) year shall be reinstated to the position from which the leave was granted, assuming it still exists, or one of equivalent rank and status if the position no longer exists.

4. A teacher returning from leave of more than one (1) year shall be reinstated to a position of the same rank and status.

Based upon the above facts, the Association urges that the District should be found to have violated the Educational Employment Relations Act.

ISSUES

A. Whether Joyner and the Association filed timely charges against the District?

B. Whether the District violated the EERA by repudiating, disavowing, or unilaterally changing the provisions of the contract relating to sick leave and verification of illness?

C. Whether the District violated the EERA by repudiating or unilaterally changing the provisions of the agreement relating to the processing of grievances?

D. Whether the District violated the EERA by discriminating against Rosebud Joyner because of the exercise of protected rights?

CONCLUSIONS OF LAW

Timeliness

The Educational Employment Relations Act provides that PERB shall not have jurisdiction to issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge . . . " (Cal. Gov. Code, section 3541.5 (a) (1)) PERB has held that the statute of limitations must be raised by a respondent as an affirmative defense or is otherwise waived. (See Walnut Valley Educators Association (2/28/83) PERB Decision No. 289 and cases cited therein at 10-12.)

As found above, the District asked Joyner to verify certain absences on and after March 6, 1981. The record further shows that when Joyner failed to verify her absences with the requested doctor's excuse, the District treated her absences as personal necessity leave and denied any compensation for the dates when she was not at work. Joyner became aware of the denial of compensation when she received her April and/or May paycheck(s).

Joyner spoke to Union President James Gerald at or about the time the requests for physician verifications were made in March 1981. She asked Gerald whether she had to provide such verifications and he told her that she did not. Gerald further testified he viewed the District's requirement for verification unreasonable and a violation of the agreement. He told Joyner

she should file a grievance at that time. Gerald spoke with Assistant Superintendent Bernard Garen in early 1981 about his concerns relating to the District's application of the contractual provisions for doctor's verification and sick leave compensation in the Joyner matter. Gerald admitted that Garen told him that the District was concerned about the cost of Joyner's absences and it was his view that Garen was concerned about the number of absences as well.

Gerald further testified that when he learned in early May that the District intended to commence dismissal proceedings against Joyner, he considered these proceedings a matter outside the provisions of the contract. Since Joyner was not a member of the Union, it would not represent her. Gerald further testified that he did not want to ask Joyner too many questions about the nature of her dispute with the District because he did not want to have too much information and risk being charged, subsequently, with a breach of the Union's duty to fairly represent employees.

The charge in this matter was filed by Joyner in May of 1982, almost a year after the events leading to the dispute concerning doctor's excuses and sick leave compensation. The charge was amended and the Union was joined as a party subsequent to that time. The final amendment of the charge was in June of 1982.

It is found that Joyner was aware of the District's intended application of the sick leave provisions and doctor's verification requirements in March, April and May of 1981, almost a year prior to the time that the charge was filed.[10] It is further found that the Association was equally aware, or should have been aware, of the District's intended application of the contractual provisions relating to sick leave and doctor's verifications at or about this same time. Gerald's own admission shows that he knew of the District's request that Joyner provide a verification of absences. Gerald's discussions with Garen also revealed his knowledge of the District's concern about the number of absences for alleged sick leave.

Gerald, most assuredly, could have found out that Joyner had not been compensated for certain alleged absences due to illness, had he asked Joyner when she received her checks covering the months of April and May of 1981. While nothing in the record shows that such an inquiry was made, it was incumbent upon the Union to find out whether its contract relating to provisions of doctor's verifications and sick leave had been jeopardized by the actions of the District relating to

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[10]The District wrote several letters between March and May 1981 concerning the matter of verification. The first notice of the District's intended application of this requirement occurred on March 6, 1981, and Joyner was on notice from that date. (See NLRB v. California School of Psychology (9th Cir. 1978) 583 F.2d 1099 [99 LRRM 3195].)

this employee. Certainly, in early May 1981 when the Association learned that Joyner might be discharged, it was on notice that the District may have taken some action relating to matters which Joyner discussed with Gerald in the spring of 1981. (Contrast, NLRB v. Don Burgess Construction Corp. d/b/a Burgess Construction, Builders, and Donald Burgess and Verlon Hendrix d/b/a V & B (9th Cir. 1979) 596 F.2d 378 enf'g (1979) 227 NLRB 765; NLRB v. Allied Products Corp., Richard Brothers Division (6th Cir. 1977) 548 F.2d 644.)

Similarly, Gerald should have known and it is concluded that he must have known, that the District was, in part, proceeding against Joyner in its dismissal action because of her excessive absences. Gerald's frequent conversations with Joyner during the spring of 1981, coupled with her complaints to him that the District was concerned about her absences, and Gerald's own discussions with Garen, all indicate that Joyner's use of sick leave was an issue which would have been raised in her termination proceedings. A simple question to Joyner would have revealed the basis for the District's action. If indeed, the District's action would have raised contractual questions, the Association should have known about it at that time.

The fact that the Association was reluctant to obtain too much information from Joyner because it feared it might be found to be derelict in its representational obligations in another action, is hardly justification for failure to police its contract.

It is concluded that the Association knew or should have known, in the spring of 1981, of the District's intended application of the doctor's verification and sick leave provisions of the agreement between the parties. Therefore, it is found that the allegations by Joyner and the Association relating to alleged unlawful unilateral change or repudiation of the contract concerning verification of such leave and the denial of compensation for unverified illnesses are time-barred, and those portions of the complaint are dismissed.[11]

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[11]Charging Party never argued at the hearing or in its brief that the statute of limitations was tolled by virtue of the fact that the Professional Competence Committee proceedings were in progress until approximately November of 1982 or because the Association filed a grievance. (See Victor Valley Joint Union High School District (12/29/82) PERB Decision No. 273 and State of California, Department of Water Resources, et al. (12/29/81) PERB Order No. Ad. 122-S; cf. Elkins v. Derby (1974) 12 Cal.3d 410 [115 Cal.Rptr. 641]; Myers v. County of Orange (1970) 6 Cal.App.3d 626 [86 Cal.Rptr. 198].) Neither argument would have merit. The proceedings by the Commission on Professional Competence were admittedly limited to matters outside of the contract, solely involving the dismissal and had no impact upon the issue of whether the District unilaterally changed its verification and sick leave policy. Any tangential relationship to those issues would not be sufficient to invoke the doctrine of equitable tolling in that the defenses, evidence, and issues in the competence proceeding would not be the same or sufficiently similar to justify tolling of the unfair practice filing date. (Victor Valley Joint Union High School District, supra.) Similarly, the filing of the purported grievance on January 13, 1982, admittedly beyond the time limits of the grievance procedures in the contract and almost nine months following the alleged unilateral changes would not permit charging party to argue that the statute of limitations should be tolled as a matter of equity and the argument would be barred by the doctrine of laches. (See and compare Calexico Unified School District (12/20/82) PERB Decision No. 265 at 13.) Respondent in this case would most

Conversely, the allegations of the charge relating to the unlawful conduct of the District in failing to process the grievance filed in January of 1982 and the alleged repudiation of the contract and unlawful motivation in discharging Joyner in November of 1981, are found not to be time-barred and fall within a period of six months prior to the time the charge as subsequently amended was filed in April of 1982.

The Allegation that the District Repudiated or Changed the Contract Relating to Sick Leave and Doctor's Verification When it Discharged Joyner

Although it has been shown that the allegations of the charge relating to the District's request for verification and its subsequent denial of sick leave compensation in March, April and May of 1981 are time-barred, the District, in part, based its dismissal of Joyner on excessive absences and failure to comply with the request that she verify those absences. For this reason, the Union's contention that the District repudiated the contract by terminating Joyner because of her excessive absences and failure to comply with the verification requirements must be examined briefly here.

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assuredly be surprised. The charging party waited nine months in which to file a grievance. It would hardly be equitable to toll the statute of limitations for an additional six months thereafter. The statute may be tolled during the time a party prepares for and pursues a grievance; however, time spent sitting on one's rights is not included. (See Los Angeles Unified School District (5/20/83) PERB Decision No. 311 at 4-7 and San Dieguito Union High School District (2/25/82) Decision No. 194.)

The Union argues that Joyner's termination constituted a repudiation of the contract provisions which permit employees who have used all of their sick leave to be further compensated for additional days of sick leave up to 110 days per year. This compensation is based upon the differential between their regular rate of pay and the amount paid to substitutes. (See contractual provisions at page 24 above.) The Union also contends that the District's request for verification prior to the time Joyner was absent constitutes a repudiation of the agreement and her failure to comply with the request cannot be a valid basis for discharge.

Thus, Joyner and the Association contend that by terminating Joyner for excessive absences and failure to verify absences, the District unilaterally changed or repudiated the contract in violation of the District's duty to bargain pursuant to EERA section 3543.5(c). (See Grant Joint Union High School District (2/26/82) PERB Decision No. 196; Victor Valley Joint Union High School District (12/31/81) PERB Decision No. 192; see also Davis Unified School et al. (2/22/80) PERB Decision No. 116; see C & C Plywood Corp. (1967) 385 U.S. 421 [64 LRRM 1065]; NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177].)

In Grant Joint Union High School District, supra, PERB held that in order to establish a prima facie violation of

section 3543.5(c) when a unilateral change in or repudiation of a contract or past practice is alleged, a charging party must show: (1) that the respondent has breached or otherwise altered the parties' written Agreement or its own established past practice; (2) that the breach or alteration amounts to a change of policy (i.e., that it had a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members); and (3) that the change in policy concerns matters within the scope of representation. (Placer Hills Union School District (11/30/82) PERB Decision No. 262 at 3.) A mere isolated act against a single employee is insufficient to establish a unilateral change in or repudiation of an established policy or an existing contractual term. (North Sacramento School District (12/20/82) PERB Decision No. 264 at 13.) There is a fine line between PERB's lack of authority to enforce an employment contract between the parties, and the need to determine its content or terms in order to establish whether a violation of the EERA has occurred. (Victor Valley Joint Union High School District, supra; C & C Plywood Corp., supra.)

The contract between the District and the Association provides that:

> It shall be the prerogative of the District to require physician's verification of absence due to illness or injury if the District has reason to believe that the absence may not have been used for proper sick leave purposes.

The Association argues that the District's declaration on March 6, 1981, that all Joyner's future absences would have to be verified violates the agreement which only requires verification of absences after they have occurred. The record shows that at the meeting on March 6, 1981, Bard warned Joyner that all future absences would be subject to verification. The record reflects that thereafter the District, repeatedly requested Joyner to verify her absences in March, April and May after they occurred. These requests were made in writing by Rose Bard. Further, Joyner testified that when she called the substitute clerk to tell her that she would be returning to work after an absence, the clerk on behalf of the District, requested that Joyner bring a doctor's verification.

Thus, assuming that the Union's contract interpretation is correct, the record reflects that the District did not repudiate the agreement. Rather, on March 6, 1981, the District gave advance warning to Joyner, that in the future, absences will have to be verified based upon her undisputed history of poor attendance for almost two years. Moreover, after each absence or group of absences, the District requested, on at least three or four occasions subsequent to their occurrence, that Joyner verify these absences. Joyner failed to comply. The District's application of the provisions of the contract, in no way repudiates the plain meaning of the agreement.

Moreover, Joyner's substantial and escalating number of absences, six years after her initial injury, amply justify the District's request that her absences be verified by a physician. This interpretation is consistent with the provisions of the contract permitting the District to verify those absences which seem doubtful. Finally, it is notable that Joyner testified her failure to provide doctor's excuses was not based upon her belief that she had a contractual right to refrain from doing so, but rather was based upon her own determination that the District had all the information it needed.

The District's action discharging Joyner as unfit for service due to excessive absences does not in any way constitute a repudiation of the contractual provisions providing for excess sick leave compensation of up to 110 days a year. The provisions of the agreement do not guarantee that the employees may have over 110 days a year of sick leave. Such an interpretation is not consistent with the plain language of the agreement. The negotiating history indicates that the implementation of the sick leave language was incorporated solely to bring the contract into conformity with the provisions of section 44977 of the Education Code. The section upon which the Association relies in its claim of repudiation, merely describes how employees will be compensated when their absences exceed the maximum days of sick leave

accumulated. Pursuant to the contract, the employees will earn 10 leave days of sick leave each year. Nothing in the contract guarantees that after their accumulated sick leave is exhausted, employees may then take an additional 110 days of sick leave.

The District's interpretation of the contract provisions in question is a reasonable one. Absent some evidence of a contrary intent or established practice, the District's conduct cannot be found to be a repudiation of an agreement or unilateral change of an existing practice. (See Chico Unified School District (2/22/83) PERB Decision No. 286, supra.) Thus, the allegations that the District repudiated the agreement by basing Joyner's discharge on excessive absences and failure to verify illness are dismissed.

The District's Failure to Process the Grievance

In a similar vein, the Association argues that the District failed to process its grievance concerning the District's requirement that Joyner verify her absences and its failure to pay her for her unverified absences. The Association contends that the District's failure to process this grievance, constituted a unilateral change and repudiation of the obligations of the District under the contract. (See cases cited at pp. 34-35 above.)

Union President James Gerald testified that at some unspecified time prior to January of 1982, he spoke with Assistant Superintendent Garen about filing a grievance

concerning Joyner's sick leave verification and compensation. At the time Gerald spoke with Garen, he testified that he knew that the grievance time lines had long passed and suggested that he might pursue the dispute against the District in some other forum. Garen responded that he preferred that a grievance be filed.

Sometime after the conversation between Gerald and Garen, the Union presented a written grievance to the District. Ostensibly, copies of the grievance were given to both Garen and the superintendent. At the time Garen was given a copy of the grievance, he was preparing to leave to take a position with another school district. The record is devoid of any evidence of what the District did about this grievance.

No further communications between the Association and the District occurred until approximately April of 1982 when the Association sent the superintendent a list of three grievances which were outstanding and unresolved in the wake of Garen's departure. The Association wrote, "We would appreciate your Level II - Proposed Resolution within 10 days; not hearing this, in any manner, we shall assume you wish to proceed to arbitration." The record fails to show whether the District

responded to this letter. Moreover, the record fails to show that the Union did anything further in pursuit of the grievance. Yet the contract requires the Union to notify the District if a matter is submitted for arbitration (see Article V B.4.a. at pp. 22-23 above). The record shows no evidence of any grievance other than Joyner's which was not resolved in some fashion and it appears that the Union and the District were able to resolve the other two grievances mentioned in the April letter to the superintendent. Neither of these grievances involved a timeliness question.

The record fails to support an allegation that the District changed a past practice or policy of generalized effect, so was to amount to a violation of the EERA. At worst, the District agreed to make an exception to the time lines in the contract to permit the filing of a grievance at the first level. Having made this exception, it is unclear that the District was committed to do anything beyond look at the plain language of the grievance. Nothing in the contract obligated the District to agree to proceed to arbitration.

This unique situation relating solely to one individual's grievance, filed substantially out of time, does not justify a finding that the District repudiated the agreement. The record would equally admit of an interpretation that the District's action or nonaction constituted a denial of the grievance as much as it constituted a failure or refusal to process it. Whether the District's rejection of the grievance is justified

is a matter for another tribunal. See Baldwin Park Unified School District (4/4/79) PERB Decision No. 92.

Finally, there is a serious question why the Union took no further action to move the Joyner grievance forward. The mere filing of the grievance and a subsequent letter some three months later hardly indicates an enthusiastic pursuit of the grievance to permit one to conclude that the District had unlawfully repudiated the procedures for grievance resolution in the contract.

It is concluded that the District's conduct does not support a finding of a repudiation of its obligations under the grievance provisions of the contract. The Union has failed to show the District refused to go to arbitration or that the District engaged in conduct which can be construed as a repudiation of the policies or practices of the District relating to grievance processing.

Thus, the Association has failed to prove the District unilaterally changed or repudiated its agreement in the manner in which it processed Joyner's grievance. This aspect of the charge is dismissed.

The Alleged Discrimination Against Joyner Because of Protected Activity

The Association contends that the District discriminated against Rosebud Joyner by discharging her because of her exercise of protected rights under the EERA. In the now

frequently cited case of Novato Unified School District (4/30/82) PERB Decision No. 210, PERB set forth the test and general standards to be applied in cases where employers are alleged to have discriminated against employees because of an exercise of rights protected by the EERA. Under the Novato rule, the charging party alleging discrimination within the meaning of section 3543.5(a) has the burden of showing that the protected conduct was a motivating factor in the employer's decision to take adverse personnel action. Quite often, evidence of such motivation must be established circumstantially since direct proof is often unavailable. (See Republic Aviation Corp. v. NLRB (1945) 324 U.S. 793 [16 LRRM 620].) If the charging party can establish an inference that there is a nexus between the proved protected activity and the adverse personnel action, then the burden will shift to the employer[12] to show that it would have taken the action regardless of the employees' participation in protected activity. (Novato, supra; see also, Wright Line, a Division of Wright Line, Inc. (1980) 251 NLRB 1083 [105 LRRM 1169].)

When viewed in its totality, the record in this case fails to show that Joyner engaged in any protected activities of sufficient moment to establish that they were a motivating

[12]Compare NLRB v. Transportation Management Corp. (1st Cir. 1982) 674 F.2d 130 cert, granted (U.S.S.Ct. 1982) 103 S.Ct. 372 No. 82-168.

factor for discriminatory termination by the District. (See Poway Unified School District (4/14/83) PERB Decision No. 303, at 8-9.)

At some time in the late 1960's Joyner was a member of the American Federation of Teachers. Her activities with that Union were hardly notable. There is no evidence that, during the time that she was affiliated with that organization, the District knew of her activities or had reason to be concerned about them. Joyner disaffiliated with the American Federation of Teachers in mid-1970.

It was not until some unspecified time in 1980-81 school year that Joyner claims to have engaged in any other specific conduct which she alleges to be protected. During this period of time, she complained about dogs and fleas in and around her classroom. There is no evidence of the frequency of the complaints, and there is no evidence the District responded to them.

Joyner was involved with other teachers in opposing the mid-year change of principal at the school in which she worked in 1981. Her role in this protest was no different than any other of the 10 to 20 teachers on the "committee." No other teacher appears to have had the focus of discrimination vested upon them.[13] Joyner along with other teachers, also opposed

[13]Joyner testified that a probationary teacher was also discriminated against. However, the imprecise testimony of Joyner concerning the person leaves the record wanting and fails to establish what adverse action, if any, was taken against this employee.

a transfer of certain colleagues from her school. She made a statement that a class action should be filed and this statement was overheard by an assistant principal.

Finally, during this same period of time, the 1980-81 school year, Joyner intentionally failed to attend certain faculty meetings because she felt her time was better spent in the classroom.

It is important to consider that most of these activities alleged to be protected, were done in association with many other faculty members. Though Joyner claimed to be involved in each of these actions, the record shows that she was no more vocal, no more prominent and no more a leader than any of the other employees involved in these activities. Thus Joyner's minimal conduct, lacking character as a unique threat to the District, hardly justifies any reaction by this employer. (Contrast San Leandro Unified School District (2/24/83) PERB Decision No. 288 where the protest of extra duty assignments was carried out by a highly visible individual who actively directed and organized the conduct in question.)

Moreover, many of the activities which Joyner purportedly engaged in were hardly protected. It is doubtful that employees are free to protest an administrative determination to change site managers, principals or others absent some relationship to employee working conditions. (See State of California, Department of Developmental Services (7/28/82) PERB

Decision No. 228-S.) The protest here had nothing to do with the impact on the employees' work but rather was based on their personal preference for a particular individual as principal. (Compare State of California, Department of Transportation (11/16/82) PERB Decision No. 257-S at 7-8.)

Joyner's failure to attend faculty meetings because she felt her time was better spent in teaching students or for any other reason is not protected, is insubordinate and justifies no protection under the EERA. (See Modesto City Schools (3/8/83) PERB Decision No. 291 at 22-23) Finally, Joyner's minimal safety complaints and complaints about transfer of fellow teachers, while arguably protected, are not in and of themselves sufficient to raise an inference of discrimination when as noted below, the employer establishes valid reasons for personnel actions taken against the employee. (See Sacramento City Unified School District (11/18/82) PERB Decision No. 259; cf. NLRB v. Tamara Foods, Inc. (8th Cir. 1982) 692 F.2d 1171 [111 LRRM 3003] enfg. (1981) 258 NLRB No. 180 [108 LRRM 1218]; Zurn Industries, Inc. v. NLRB (9th Cir. 1982) 680 F.2d 683 [110 LRRM 2944] enfg. (1981) 255 NLRB No. 88 [106 LRRM 1353].

The fact that the District began to focus on Joyner's absences and eventually brought termination action shortly after a new principal came to her school, does not in and of itself suggest that there was discriminatory motive. Rather Joyner's history of absences for over two years during 50

percent of the school year, coupled with her insubordinate conduct with regard to the new principal amply justified the District's focus upon her and concern about her continued ability to function as a teacher of the District. The District's response under the facts of this case appears to be justified and cannot be a basis for an inference of wrongdoing.

It is thus concluded that the evidence on this record does not support a finding that the adverse personnel actions taken against Joyner were in any way motivated by her exercise of protected rights pursuant to the EERA. Thus, this aspect of the charge must be dismissed.

Interference

Nor can the Association or Joyner successfully argue that the District interfered with Joyner's protected rights. (See Carlsbad Unified School District (1/30/79) PERB Decision No. 89.) The record reflects that the District discharged Joyner when she failed to produce verification and denied her certain compensation for alleged absences due to illness. The District's reasons for requiring doctor's excuses and failing to pay for absences without verification are amply justified by its need to maintain a stable academic environment for its students. "EERA does not guarantee employee activists a right to be insulated from nondiscriminatory personnel actions." Office of the Los Angeles County Superintendent of Schools (12/16/81) PERB Decision No. 263 at 8-9. Since the personnel

actions taken against Joyner have been found to be nondiscriminatory, concomitantly there is no finding that these actions interfered with any of Joyner's protected rights. Thus it is concluded, the District did not interfere with any rights protected by the EERA.

PROPOSED ORDER

Based upon the foregoing findings of fact, conclusions of law, and the entire record in this matter, the unfair practice charge in case LA-CE-1562, filed by the Inglewood Teachers Association and Rosebud Joyner against the Inglewood Unified School District and the incorporating PERB Complaint are hereby DISMISSED.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on June 29, 1983, unless a party files a timely statement of exceptions. In accordance with the rules, the statement of exceptions should identify by page citation or exhibit number the portions of the record relied upon for such exceptions. See California Administrative Code, title 8, part III, section 32300. Such statement of exceptions and supporting brief must be actually received by the Public Employment Relations Board itself at the headquarters office in Sacramento before the close of business (5:00 p.m.) on June 29, 1983, or sent by telegraph or certified United States

mail, postmarked not later than the last day for filing in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, part III, section 32300 and 32305.

Dated: June 9, 1983

STEPHEN H. NAIMAN
Administrative Law Judge